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which caused the forfeiture by the veteran.

(b) Burial and plot or interment allowance is not payable based on a period of service commencing prior to the date of commission of the offense where either the veteran or claimant has forfeited the right to gratuitous benefits under §3.902 or §3.903 by reason of a treasonable act or subversive activities, unless the offense was pardoned by the President of the United States prior to the date of the veteran's death.

(Authority: 38 U.S.C. 5904(c)(2), 5905(a))

CROSS REFERENCE: Effect of forfeiture after veteran's death. See §3.904.

[38 FR 30107, Nov. 1, 1973, as amended at 41 FR 55875, Dec. 27, 1976]

§3.1610 Burial in national cemeteries; burial of unclaimed bodies.

The statutory burial allowance and permissible transportation charges as provided in §§3.1600 through 3.1611 are also payable under the following conditions:

(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries; or

(b) Where the body of a deceased veteran is unclaimed by relatives or friends (see §3.1603), the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of §3.1604(d)(1)(ii)-(iv), provided that the total amount payable for burial and transportation expenses (including the plot allowance, if entitlement is established) does not exceed the total amount payable had burial been in a national cemetery.

(Authority: 38 U.S.C. 1501(a))

[57 FR 29025, June 30, 1992; 57 FR 40944, Sept. 8, 1992]

§3.1611 Official Department of Veterans Affairs representation at funeral.

When requested by the person entitled to the custody of the body of a deceased beneficiary of the Department of Veterans Affairs, official representation at the funeral will be granted provided an employee is available for the purpose and this representation will entail no expense to the Department of Veterans Affairs.

[26 FR 1622, Feb. 24, 1961]

§3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

(a) *Purpose.* This section provides for the payment of a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of §1.631(a)(2) and (b) of this chapter to the person entitled to request such a headstone or marker.

(b) *Eligibility for the allowance.* All of the following conditions shall be met:

(1) The deceased veteran was eligible for burial in a National cemetery (See §1.620 (a), (b), (c) and (d) of this chapter); or died under circumstances precluding the recovery or identification of the veteran's remains or the veteran's remains were buried at sea.

(2) The veteran was buried on or after October 18, 1978.

(3) The headstone or marker was purchased to mark the otherwise unmarked grave of the deceased veteran or, if death occurred prior to December 18, 1989, the veteran's identifying information was added to an existing headstone or marker.

(Authority: 38 U.S.C. 2306(d))

(4) The headstone or marker is for placement in a cemetery other than a National cemetery or the headstone or marker upon which the veteran's identifying information was added is situated in a cemetery other than a National cemetery.

(c) *Person entitled to request a Government-furnished headstone or marker.* For purposes of this monetary allowance, the term "person entitled to request a headstone or marker" includes, but is not limited to, the person who purchased the headstone or marker (or if

death occurred prior to December 18, 1989, the person who paid for adding the veteran's identifying information to an existing headstone or marker), or the executor, administrator or person representing the deceased's estate.

(Authority: 38 U.S.C. 2306(d))

(d) *Receipted bill.* A receipted bill describing the headstone or marker (or the services rendered in adding the veteran's identifying information to an existing headstone or marker) date of purchase, purchase price, the amount of payment and the name of the person who made such payment, shall accompany a claim for this monetary allowance.

(e) *Payment and amount of the allowance.* (1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker. If funds of the deceased's estate were used to purchase the headstone or marker or, if death occurred prior to December 18, 1989, to have the deceased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make a distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedent's personal domicile.

(Authority: 38 U.S.C. 2306(d))

(2) The amount of the allowance payable is the lesser of the following:

(i) Actual cost of acquiring a non-Government headstone or marker or, if death occurred prior to December 18, 1989, the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(Authority: 38 U.S.C. 2306(d))

(ii) The average actual cost, as determined by VA, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran's identifying in-

formation on an existing headstone or marker were purchased.

(3) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of VA's costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the "Notices" section of the FEDERAL REGISTER.

(Authority: 38 U.S.C. 2306(d))

(4) The following applies to joint or multiple headstones or markers:

(i) When a joint or multiple non-Government headstone or marker is purchased subsequent to the veteran's death, the amount set forth in paragraph (e)(2)(ii) of this section shall be available as reimbursement for the cost of the veteran's portion of the joint or multiple headstone or marker.

(ii) When a joint or multiple non-Government headstone or marker is existent at the time of the veteran's death, the allowance payable as reimbursement under paragraph (e)(2) of this section shall be determined based on the cost of the services for adding the veteran's identifying information.

(f) *Payment of allowance prohibited.* This monetary allowance shall not be paid when a Government headstone or marker has been requested or issued under the provisions of §1.631 (a)(2) and (b) of this chapter.

(g) *Claims.* There is no time limit for filing claims for monetary allowance in lieu of a Government-furnished headstone or marker.

(Authority: 38 U.S.C. 2306(d))

(h) The monetary allowance in lieu of a Government-furnished headstone or

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marker is not payable if death occurred on or after November 1, 1990.

(Authority: Pub. L. 101-508)

[44 FR 58711, Oct. 11, 1979, as amended at 47 FR 19131, May 4, 1982; 49 FR 19653, May 9, 1984; 51 FR 17629, May 14, 1986; 52 FR 34910, Sept. 16, 1987; 55 FR 50323, Dec. 6, 1990; 56 FR 25045, June 3, 1991; 56 FR 65851, Dec. 19, 1991; 61 FR 20727, May 8, 1996]

Subpart C [Reserved]

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

AUTHORITY: 38 U.S.C. 501(a), unless otherwise noted.

SOURCE: 66 FR 18195, Apr. 6, 2001, unless otherwise noted.

GENERAL

§ 3.2100 Scope of Applicability.

Unless otherwise specified, the provisions of this subpart apply only to claims governed by part 3 of this title.

(Authority: 38 U.S.C. 501(a)).

§ 3.2130 Will VA accept a signature by mark or thumbprint?

VA will accept signatures by mark or thumbprint if:

(a) They are witnessed by two people who sign their names and give their addresses, or

(b) They are witnessed by an accredited agent, attorney, or service organization representative, or

(c) They are certified by a notary public or any other person having the authority to administer oaths for general purposes, or

(d) They are certified by a VA employee who has been delegated authority by the Secretary under 38 CFR 2.3.

(Authority: 38 U.S.C. 5101).

REVISIONS

§ 3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review

of that decision under this section. The review will be conducted by a Veterans Service Center Manager or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under § 3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding § 3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision,